

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

YOLANDA HUGHES,

Plaintiff,

v.

DENIS McDONOUGH,

Defendant.

Case No. 3:24-cv-00248-MMD-CLB

ORDER

Pro se Plaintiff Yolanda Hughes attempted to bring a civil rights action under 42 U.S.C. § 1983 against Denis McDonough of the Department of Veteran Affairs. (ECF No. 2-1.) The Court adopted the Report and Recommendation (“R&R”) of United States Magistrate Judge Carla L. Baldwin (ECF No. 4), giving Plaintiff until August 18, 2024, to file an amended complaint that addressed the deficiencies identified in the R&R (ECF No. 6). Plaintiff never filed an amended complaint or otherwise responded to the order. There is no indication on the docket that she did not receive the Court’s order, either. Thus, Plaintiff did not timely comply with the Court’s order giving her the opportunity to file an amended complaint, and several months have passed.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order to file an amended complaint. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1263 (9th Cir. 1992), *as amended* (May 22, 1992) (affirming the “district court’s dismissal of [the *pro se* plaintiff’s] second amended complaint for failure to comply with its order to amend that complaint”).

In determining whether to dismiss an action on one of these grounds, the Court

1 must consider: (1) the public's interest in expeditious resolution of litigation; (2) the Court's
2 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
3 favoring disposition of cases on their merits; and (5) the availability of less drastic
4 alternatives. See *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th
5 Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

6 The first two factors, the public's interest in expeditiously resolving this litigation
7 and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's
8 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
9 because a presumption of injury arises from the occurrence of unreasonable delay in filing
10 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
11 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
12 cases on their merits—is greatly outweighed by the factors favoring dismissal.

13 The fifth factor requires the Court to consider whether less drastic alternatives can
14 be used to correct the party's failure that brought about the Court's need to consider
15 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
16 that considering less drastic alternatives *before* the party has disobeyed a court order
17 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
18 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
19 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
20 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled
21 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).
22 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
23 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
24 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
25 unless Plaintiff files a viable amended complaint, the only alternative is to enter a second
26 order setting another deadline. But the reality of repeating an ignored order is that it often
27 only delays the inevitable and squanders the Court's finite resources. The circumstances
28 here do not indicate that this case will be an exception: there is no hint that Plaintiff needs

1 additional time.

2 It is therefore ordered that this case is dismissed, in its entirety but without
3 prejudice, for Plaintiff's failure to timely comply with the Court's order requiring her to file
4 an amended complaint if she wished to proceed with this action.

5 The Clerk of Court is directed to enter judgment accordingly and close this case.

6 DATED THIS 6th Day of December 2024.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE